

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

COREY R. THOMAS,)	
)	
Petitioner,)	
)	
vs.)	Case No. 4:06CV01670 ERW
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

MEMORANDUM AND ORDER

This matter is before the Court upon Petitioner's Motion to Reconsider the Court's Reclassification of Movant's Motion to Alter or Amend Judgment and Relief from Judgment [doc. #28] and Motion for Leave to Proceed In Forma Pauperis on Appeal [doc. #29].

On November 7, 2008, the Court issued a Memorandum and Order reclassifying Petitioner's Motion to Alter or Amend Judgment as a successive 28 U.S.C. § 2255 motion. Petitioner has now brought to the Court's attention that his motion was also brought pursuant to Fed. R. Civ. P. 59(e), and that this part of his motion should not have been reclassified. The Court agrees. Fed. R. Civ. P. 59(e) "motions serve the limited role of correcting 'manifest errors of law or fact or to present newly discovered evidence.'" *United States v. Metropolitan St. Louis Sewer Dist.*, 440 F.3d 930, 933 n.3 (8th Cir. 2006) (quoting *Hagerman v. Yukon Energy Corp.*, 839 F.2d 407, 414 (8th Cir. 1988)). The Court made an error of law when it converted this part of Petitioner's Motion to a successive § 2255 motion.¹

¹ While the Court erred in converting this claim into a successive § 2255 motion, the Court notes that the denial of this ground for relief was appropriate because Petitioner did "not present any additional arguments which were not previously considered by this Court's Order. Rather, he merely rehearses his previous arguments." *United States v. Libretti*, 194 F.App'x 533, 535 (10th Cir. 2006). As a result, the Court affirms the denial of this claim.

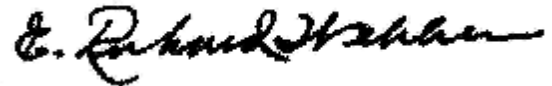
Because Petitioner's claim under Fed. R. Civ. P. 59(e) was not properly converted into a successive § 2255 motion, Petitioner's time for filing a notice of appeal should begin to run on November 7, 2008. Additionally, the Court has reviewed the record in this matter and notes that Petitioner is detained and finds the applicant financially unable to pay any portion of the required filing fee on Appeal.

Accordingly,

IT IS HEREBY ORDERED that Petitioner's Motion to Reconsider the Court's Reclassification of Movant's Motion to Alter or Amend Judgment and Relief from Judgment [doc. #28] is **GRANTED**.

IT IS FURTHER ORDERED that Petitioner's Motion for Leave to Proceed In Forma Pauperis on Appeal [doc. #29] is **GRANTED**.

Dated this 22nd Day of December, 2008.



E. RICHARD WEBBER
UNITED STATES DISTRICT JUDGE